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05 UNITED STATES DISTRICT COURT  
06 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

07 UNITED STATES OF AMERICA, )  
08 Plaintiff, ) CASE NO. CR00-272-JCC  
09 v. )  
10 JOSEPH JONATHAN JAMES, ) SUMMARY REPORT OF U.S.  
11 Defendant. ) MAGISTRATE JUDGE AS TO  
ALLEGED VIOLATIONS  
OF SUPERVISED RELEASE  
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13 An evidentiary hearing on supervised release revocation in this case was scheduled before  
14 me on August 25, 2010. The United States was represented by AUSA Marci I. Ellsworth. The  
15 defendant waived his right to counsel and asserted his right to represent himself, which request  
16 was granted. The proceedings were digitally recorded.

17 Defendant had been sentenced on or about August 23, 2001 by the Honorable John C.  
18 Coughenour on a charge of Second Degree Murder within Indian Country, and sentenced to 108  
19 months custody, 5 years supervised release. (Dkt. 101, 116.)

20 The conditions of supervised release included the standard conditions plus the  
21 requirements that defendant be prohibited from possessing a firearm, submit to mandatory drug  
22 testing, participate in a substance abuse program, abstain from alcohol, submit to search,

01 participate in a mental health program, provide financial information to his probation officer upon  
02 request, maintain a single checking account for all financial transactions, disclose all business  
03 interests to his probation officer, disclose all assets and liabilities, not possess any identification  
04 documents in any but his true identity, not associate with known gang members, and be  
05 prohibited from entering the Lummi Indian Reservation without authorization if his membership  
06 is abolished and he is excluded from the reservation.

07 On May 23, 2008, defendant admitted violating the conditions of supervised release by  
08 failing to report a change in residence and failing to report to the probation officer as instructed.  
09 (Dkt. 126). Defendant was sentenced to time served. (Dkt. 130.) On July 17, 2008, defendant's  
10 probation officer reported that defendant had testified positive for cocaine. No action was  
11 recommended at the time. (Dkt. 131.)

12 On October 3, 2008, defendant admitted violating the conditions of supervised release by  
13 consuming alcohol on two occasions, and failing to participate as instructed in the home  
14 confinement program with electronic monitoring. Judge Donohue recommended that defendant  
15 be found to have further violated the conditions of supervised release by committing the crime  
16 of assault and battery third degree, as alleged. (Dkt. 142.) Defendant was sentenced to five  
17 months in custody, to run consecutive with the sentence imposed by the tribal court, followed  
18 by 50 months supervised release including 180 months home confinement. (Dkt. 146.)

19 In an evidentiary hearing held on May 24, 2010, defendant was found to have violated  
20 the conditions of supervised release by failing to report a change in residence. (Dkt. 159.)  
21 Defendant was sentenced to five months in custody, followed by 180 days in a halfway house.  
22 (Dkt. 161.)

01 In an application dated August 10, 2010 (Dkt. 162, 163), U.S. Probation Officer Jerrod  
02 Akins alleged the following violation of the conditions of supervised release:

03 1. Failing to report to the U.S. Probation Office within 72 hours of his release, in  
04 violation of the general condition that he report to the probation office within 72 hours of release  
05 from the custody of the Bureau of Prisons.

06 Defendant was advised in full as to the charge and as to his constitutional rights. He  
07 waived his right to counsel and asserted his right to represent himself. His waiver was found to  
08 be knowing, intelligent and voluntary, and the request was granted.

09 An evidentiary hearing was conducted, consisting of the testimony of U.S. Probation  
10 Officer Jerrod Akins and the defendant. Mr. Akins testified that defendant knew he was required  
11 to contact his probation officer upon his release from Bureau of Prisons custody on August 6,  
12 2010 but did not do so. Defendant's release plan indicated that he would be residing at an  
13 address on Balen Road in Bellingham, but the address did not exist. Defendant's contact phone  
14 number was that of his grandparents, but when contacted they said they did not know defendant's  
15 whereabouts. Undoubtedly influenced by defendant's previous failures to abide by the conditions  
16 of supervised release, Mr. Akins asked for a warrant to be issued, pursuant to which the  
17 defendant was arrested.

18 Defendant testified, indicating that he correctly listed his proposed residence address as  
19 Balch Road in Bellingham, but the address was apparently misread by the probation office as  
20 Balen Road. He testified that he knew he was required to reside in a halfway house upon his  
21 release from BOP custody. He did report to the halfway house where he had previously been in  
22 residence, but the manager of that facility told him that he was not scheduled to report there.

01 Defendant called Mr. Akins on two occasions, leaving voice mail messages both times. He made  
02 alternative arrangements to reside with a friend in Bellingham, and began a job search. Shortly  
03 thereafter he was arrested.

04 I find that the government has not established by a preponderance of the evidence that the  
05 defendant violated the conditions of supervised release by failing to report to his probation officer  
06 within 72 hours of release from the custody of BOP. Defendant indicated that he attempted to  
07 contact Mr. Akins and left two voice mail messages for him. He testified that he attempted to  
08 report to the halfway house, but was not admitted. Although Mr. Akins testified that defendant  
09 did not contact him upon his discharge from BOP custody, I find the evidence in equipoise on  
10 this issue, and, therefore, the government has not borne its burden of proof.

11 I therefore recommend the Court find defendant has not violated his supervised release  
12 as alleged. At defendant's request, Mr. Hurvitz will be appointed on a stand-by basis to assist  
13 him at the next hearing, set before Judge Coughenour.

14 Pending a final determination by the Court, defendant has been released on the conditions  
15 of supervision.

16 DATED this 27th day of August, 2010.

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18 Mary Alice Theiler  
19 United States Magistrate Judge

20  
21 cc: District Judge: Honorable John C. Coughenour  
AUSA: Marci I. Ellsworth  
22 Defendant's attorney: Ralph Hurvitz  
Probation officer: Jerrod Akins